Supreme Court, U.S.
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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1998

PATRICK ANENE EGBUNE,
Petitioner,

v.

STATE OF COLORADO,
Respondent.

On Petition For Writ of Certiorari To The
(Colorado Supreme Court)

PETITION FOR WRIT OF CERTIORARI

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79 pp

ISSUES PRESENTED

1. Whether the Supreme Court of the State of Colorado, consonant with the Due Process and Equal Protection clauses of the 14th Amendment, to the United State Constitution, may destroy record and evidence submitted to it for review, or declare that the transcript of a proceeding was not filed with it for review, when in fact the transcript was filed, in order to support a decision to suspend the petitioner from the practice of law.

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People v. Smith, 937 P.2d 724, 727 (Colo. 1997)

People v. Varallo, 913 P.2d 1, 3-5 (Colo. 1997)

STATEMENT OF JURISDICTION

The order sought to be reviewed was entered on January 19, 1999. Petitioner's Motion to Reconsider was denied on February 3, 1999.

The jurisdiction of this Court is invoked under the provision of 28 U. S. C. § 1257 (a) for Petition of Certiorari to the Supreme Court of the State of Colorado concerning the Order of Suspension from the practice of law, entered against Patrick Anene Egbune, on January 19, 1999.

No rehearing nor extension of time for filing of the petition for certiorari was requested.

This Petition for certiorari, does not challenge the constitutionality of any statute of Congress and does not challenge the constitutionality of any State statute, therefore, the notification requirement of this Court's Rule 29.4(b) or (c) is not required to be made.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THIS CASE

Section 1, 14th Amendment to the United States Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

INTRODUCTION

The Petitioner, Patrick Anene Egbune, (hereinafter "Petitioner") believes that following the filing of the civil rights action against the City of Aurora, State of Colorado, Aurora, Police Officers and Wal-Mart, as a result of the wrongful arrest and treatment of Cynthia Faye Woods, presented in **Case No. 95-1850**, before this court, certiorari denied, the State of Colorado, concluded that it needed to punish the plaintiff's attorney, Patrick Anene Egbune, instead of correcting some of the violations of the simplest acts of human decency. Thus, local police and agencies of the State of Colorado were employed in manners designed to harass Patrick A. Egbune to the end that he may be trapped in law violation or his license to practice law revoke.

On June 24, 1996, The Supreme Court of the United States, denied certiorari in Case No. 95-1850. Motion to remand the case to the state court, for determination of the state causes of action was denied by the U. S. District Court for the District Of Colorado. The City of Aurora Police vehicles with Police Officers and their telescopes, began surveillance activities in front of the Petitioner's apartment, an act so open and notorious, friends of the Petitioner began to comment about it. Petitioners apartment faces the street and an open space where the police vehicles park. The Petitioner knowing that he is a law abiding citizen, ignored the activities of the government

The Petitioner believes that the State of Colorado, acting by and through its judges pursued actions designed to destroy or damage his law practice. Part of the actions taken include refusing at one time to provide hearing concerning Petitioner's client's cases and instituting groundless disciplinary proceedings against the Petitioner. Petitioner filed an action at the United States District Court for the District of Colorado in an attempt to enjoin these activities.

STATEMENT OF THE CASE

BACKGROUND CASES

Case GC-96A-63 ORIGINAL PROCEEDING IN DISCIPLINE

The first disciplinary case filed against the Petitioner was GC-96A-63. In that case, the Grievance Committee, of the Supreme Court of the State of Colorado, pursued a claim purportedly filed by a black woman named Marsh K. Harrington. It was later determined that Marsha K Harrington was at some point an employee of the Court of Appeals, State of Colorado. A letter of admonition was sent to the Petitioner, prior to any hearing on the facts, suggesting that Petitioner had not allowed Ms. Harrington's husband to provide information needed in a divorce proceeding. Subsequently, the Petitioner continued to insist on a procedure that will enable him to prove his innocense prior to the entry of the letter of admonition in his record. Upon the Petitioner's request, a formal proceeding was initiated and it was during discovery through the Petitioner's requests for admission to the disciplinary counsel that it was discovered that the Inquiry Panel that reviewed his case, did so without reviewing any facts including the response in the form of an affidavit, filed by the Petitioner nor did the Inquiry Panel review the affidavit of Mr. William Harrington, the exhusband of the claimed "complainant". There was no petition to the court that issued the divorce decree suggesting any error in its proceeding, or for any correction of any error or misstatement. The claimed complainant, Ms. Harrington was never placed under oath. Thus, the disciplinary proceeding was merely a direct attack on the Petitioner without any facts to support it. The alarming aspect of the entire episode was the fact that the

Inquiry Panel did not even ask for the Petitioner's response to the charge.

This matter was immediately withdrawn when Petitioner filed a motion for summary judgment. The letter of admonition was withdrawn. Prior to withdrawal of this disciplinary proceeding, the Petitioner had filed an action in the United States District Court. This proceeding demonstrates that in the State of Colorado, the Supreme Court sets up panels to review claims or charges against an attorney such as the Petitioner and neglects to see that legal procedures are followed. Further, that the charges are in some cases fabricated, as in the case of the Petitioner.

U. S. District Court, Civil Action No.: 96-WM-1237

Unable to stop the activities of the government of the State of Colorado, and based on the injustice of the actions being taken, the Petitioner filed a civil action in the United States District Court, for the District of Colorado. This action was taken because the Petitioner did not see the basis of the disciplinary action filed against him and the other harassing activities that was being pursued by the government and did not find an immediate way to stop the actions.

Case No. 96-SA-270 ORIGINAL PROCEEDING IN DISABILITY

As soon as the Petitioner discovered the method used to institute disciplinary action in GC 96A-63, and recognizing that the method violates elementary principles of due process of law as provided both in the state and federal Constitution, and violates human decency, a motion for summary judgment was filed and the disciplinary proceeding was withdrawn. However, as soon as the disciplinary proceeding was withdrawn, a proceeding in disability was immediately instituted in its place.

Petitioner had disclosed to the Supreme Court of the State of Colorado, prior to be licensed to practice law, that he had suffered manic depression in the past as a result of his bi-polar condition. On April 10, 1997, a hearing was had to immediately place Petitioner in disability list. Petitioner has practiced law since May 10, 1991 without any medical or psychological problem and has effectively controlled his bi-polar condition with medication. One of the panelist, John A. Purvis a member of the Colorado bar, relentless questioned the wisdom of placing someone in disability when evidence of disability is clearly lacking. **APPENDIX D.** Mr. John A. Purvis continued and stated that it was clear to everyone that the State psychiatrist had at the time of the hearing seen the Petitioner and testified that there was no evidence of bi-polar condition after evaluating the Petition, thus that no evidence existed at the time to show that Petitioner is suffering from bi-polar condition so as to justify placing the Petitioner in disability.

At the hearing, the disciplinary counsel, representing the Grievance Committee of the Colorado Supreme Court, stated unequivocally that Petitioner should be suspended from the practice of law and placed on disability, because he is sure that Petitioner is going to attack a woman soon. Shortly thereafter member of the Colorado bar named Lisa Hensley, met the Petitioner at a hearing in a juvenile case and requested to meet the Petitioner for lunch. On April 23, 1997, Petitioner and Lisa Hensley had lunch. After Lunch Ms. Hensley requested to visit the Petitioner's office and the Petitioner agreed. Lisa Hensley visited Petitioner's office. The highlight of her visit was the removing of her shoes and opening and closing her legs while seating in front of the Petitioner's desk. At the end of her visit, she declared that she was sorry for what she has done, that she was doing a favor to an individual who had worked at Gates Rubber Company. A few months earlier, the disciplinary counsel, representing the Grievance Committee of the Supreme

Court of the State of Colorado, had stated at a seminar, that he had worked for Gates Rubber Company before joining the office of the disciplinary counsel. The disciplinary counsel in a meeting scheduled for settlement conference with Petitioner, Patrick Anene Egbune, also stated that the reference made by the Petitioner to **Linda Hensley** in his "Response to Petitioner's Second Supplement to Petition concerning Petitioner's disability inactive status", was erroneous, that the actual name of the woman that came to Petitioner's office was **Lisa Hensley**. This is how the Petitioner came to know the actual name of the woman. The Petitioner did not provide the disciplinary counsel with any description of the woman referred to as Linda Hensley, but the disciplinary counsel expressed knowledge of the woman as Lisa Hensley. On June 3, 1997, the hearing board met and considered the disability hearing. On or about July 22, 1997, the disciplinary counsel again reported to the Supreme Court, that on June 13, 1997, Rhonda Robertson a black woman, filed a request for investigation against the Petitioner. This report was also made to the hearing board on the disability case filed against the Petitioner, probably to confirm the disciplinary counsel's "prediction". The Supreme Court of the State of Colorado, on August 29, 1997, placed Petitioner in Disability inactive status. Petitioner was not given the opportunity to confront his accuser, Rhonda Robertson. Rhonda Robertson was never placed under oath. There was no evidentiary hearing.

Petitioner upon being placed on Disability suspension, consulted with psychiatrists and was told that Petitioner is perfectly alright except that it appears that the Supreme Court of the State of Colorado has taken the position that by filing the case in Federal Court, U. S. District Court, Civil Action No.: 96-WM-1237, the Petitioner must be "crazy". Petitioner stated that he did not consider it a problem given the harassment he was facing. The Petitioner immediately moved to have the case

dismissed and immediately thereafter on November 12, 1997, Petitioner was reinstated to active status. Statement of a psychiatrist directed to the Supreme Court of the State of Colorado, submitted as grounds for reinstatement is submitted as **APPENDIX H.** Petitioner did not appeal the action of the Supreme Court of the State of Colorado because of the short period that he was placed on disability. Petitioner thought that this would end the harassment. But it did not.

While these cases were pending police harassment of the Petitioner continued. This kind of harassment was among the facts alleged in the complaint in federal district court. It was never denied. Then the Petitioner suspected that some women were coming to his office and from their conduct may have been employed by employees of the Grievance Committee or the disciplinary counsel directly or through their agents or representatives, to visit the Petitioner's office, posing as clients. At no time did the Petitioner suspect that the Supreme Court of the State of Colorado would be involved or rely on a set up that is purely fabricated as a means of disciplining an attorney or as a means of making decisions. The harassment against the Petitioner continued in the form of two additional charges brought against the Petitioner in which the Petitioner was summoned to answer questions concerning cases that the Petitioner prevailed in court proceedings.

THE CASE BEING APPEALED

CASE CAPTIONED NOS. 98-SA-120 & 98-SA-206, SUPREME COURT OF THE STATE OF COLORADO
APPENDIX A PETITIONER SEEKS A WRIT OF CERTIORARI ON 98-SA-206, SEXUAL ASSAULT

The Petitioner did not file an exception in case 98-SA-120. It was the Grievance Committee that filed exception that the

Petitioner responded to. Certiorari is not sought on Case 98-SA-120, since the Petitioner did pursue the case. The case for which the Petitioner seeks certiorari is case **98-SA-206** and the statements submitted herein deals with that case. It is a serious matter and the Petitioner spent his effort, a private investigator, deposition of the witness in attempt to show that the allegation of sexual misconduct against him was untrue but was not allowed to use the evidence gathered to prove his innocence. The Supreme Court of the State of Colorado also recognized that this part of the combined decision was the serious part of the allegations against the Petitioner.

Among the individuals that came under what appeared to be a "sting" operation in the Petitioner's office, included **Lisa Hensley,** a white female, an attorney, a professional person who would not succumb to any lies against the Petitioner. In dealing with the Grievance Committee, it was never denied that Ms. Hensley came to the Petitioner's office with the intent to engage the Petitioner in a sexual comments or conduct. That did not happen.

The next female that came to the Petitioner's office, was Rhonda Robertson who appeared at the Plaintiff's office and on the first day of her visit, disclosed that she was working for the police and that there was a concern about the fact that the Petitioner did not marry a white woman. Her "attorney-client" relationship with the Petitioner covered a period of about three weeks. Petitioner had considered refusing to represent Ms. Robertson when she disclosed that she was working for the police. However, the Petitioner felt that it was better to demonstrate his professional conduct than to attempt to shy away from any investigation.

The way the Petitioner discovered the operations of Rhonda Robertson was as follows: Ms. Rhonda Robertson came to the office of the Petitioner. She sat in the loveseat at the reception area. Facing her was a book shelf. On the top shelf is the

picture of Petitioner's son, aged one year old. Upon seeing the picture, Ms. Robertson declare "I didn't know that you are married!" Petitioner responded "yes I am happily married, if you look in my office, you will see the enlarged picture of my wife on the wall". Ms. Robertson when she walked into the Petitioner's office again declared "she is black!" The Petitioner said "yes, why?" Ms. Robertson said "that is why they said how come you didn't marry a white woman!". Then the Petitioner inquired: "who said that!". There was silence. Then the Petitioner asked: "are you working for the police?" and Ms. Rhonda Robertson nodded in agreement. The Petitioner thought the statement was a flattery. Further, Ms. Robertson stated "I didn't know that an attorney can get into trouble" to which the Petitioner inquired as to why she thought that an attorney couldn't get into trouble and Ms. Robertson stated "that is how it appears from watching TV". Petitioner then told her that an attorney like anybody else can get into problems if he violates the law. Petitioner noticed that she was carrying an object the size of a small tape recorder. Later in the process of investigating the whole incident, Petitioner hired a private investigator to investigate the case. Petitioner was later informed by the private investigator, that the object described as the object carried by Ms. Robertson, indeed meets the description of police tapes used when an individual is "wired"within Arapahoe County and metropolitan area of Denver, State of Colorado.

After having suspended Petitioner in a disability proceeding, and supporting the suspension by testimony that does not allow for confrontation of the alleged witness, Rhonda Robertson, another disciplinary proceeding concerning the same allegation of misconduct by Rhonda Robertson, namely that Petitioner touched her while she was in Petitioner's office, was initiated by the Grievance Committee of the Colorado Supreme Court

On March 11, 1998, Petitioner was granted a hearing on the Rhonda Robertson allegations. Petitioner at this time has had

the opportunity to depose Ms. Robertson and was able to show through the deposition that the statements made by her of any touching or advances by the Petitioner cannot be supported by the contradictions in her deposition testimony.

At the March 11, 1999 the panelists appeared to be waiting for the Petitioner to introduce the evidence obtained through deposition and as soon the Petitioner appeared ready to present evidence, declared that they will not receive any evidence supported by the deposition. All impeachment through prior testimony was denied and rules of evidence was not followed. As they laughed, Petitioner was being asked to go outside the building and find a place to make copies of the deposition transcript, if the Petitioner wants to use. The presiding panelist and the prosecuting attorney were at all times laughing as the Petitioner was being instructed to do the errands. In spite of the obvious prejudice demonstrated by the panelists, Petitioner, preserved evidence for subsequent review through filing of exceptions to the Supreme Court of the State of Colorado. The evidence was clear upon review of the deposition and the witness statements obtained earlier by the Grievance Committee, that Rhonda Robertson was not stating the facts. It was with the Petitioner's filing of the exception under Rule 241.20, Colorado Rules of Civil Procedure, that the Supreme Court of the State of Colorado agreed to receive the deposition of Rhonda Robertson. **APPENDIX G.**

The investigative attorney, employed by the Grievance Committee was called to testify by the Petitioner, concerning her investigation of the case. The reported of the investigation was favorable to the Petitioner. Petitioner filed his exception as required by Rule 241.20, Colorado Rules of Civil Procedure. The transcript of the March 11, 1998 proceeding was filed with the Supreme Court of the State of Colorado as ordered by the Court. The Supreme Court of the State of Colorado denied receiving the transcript. Why is the Supreme Court of the State of Colorado denying that it received the original copy of the

transcript of the hearing of March 11, 1998, filed with it as discussed below?

While the Supreme Court of the State of Colorado in its opinion stated that having Michael Gendel, an employee of the Grievance act in disciplinary investigative status and also as a hearing panelist of cases brought by the Grievance Committee does create a problems of conflict of interest, independent and unbiased arbiter, contrary to Rule 241.2(c), Colorado Rules of Civil Procedure, which states that no panelist shall act as both an inquiry panel and hearing panel on the same matter. It is difficult to see how that position is reconciled with the subsequent statement of the panelist, Michael Gendel, himself, that there exist a conflict of interest. **APPENDIX M**

In the finding of the panel, the panel stated that the only reason Rhonda Robertson was believed was because she corroborated her story when she told a friend. In fact she was given several opportunities during the deposition to demonstrate any corroboration of her story and she fail to make any such assertion. Further, the panelist received into evidence the report of Rhonda Robertson, obtained from the investigative counsel as part of the investigation, in which Ms. Rhonda Robertson exonerated the Petitioner and stated that everything she said was unbelievable. It is amazing that the panelists would ignore such an important retraction. In page 4 of the witness statement, Ms Rhonda Robertson made the following statements: July 10, 1997**"The only part that was true was coming back for the police report and sitting on the sofa. The rest is unbelievable."** This report was submitted with the transcript to the Supreme Court of the State of Colorado. Evidence of the fact that Rhonda Robertson was being held hostage by police because of her drug abuse which was introduce to support her claim of working for police was refused. Given the transcript of the proceeding, the deposition of Rhonda Robertson and the witness statements submitted as

evidence, the Petitioner believed that no reasonable person will entertain the claim of misconduct suggested by Rhonda Robertson. Why should the Petitioner be disciplined for something that he did not do? However, when the panelist selected by the Grievance committee of the Supreme Court recommended discipline to the Supreme Court. The Petitioner knew that the Supreme Court would review the record de novo and that he will be cleared.

The Petitioner had no suspicion whatsoever, that the Supreme Court of the State of Colorado, would be involved in any attempt to ignore or destroy the evidence in the case or that the Supreme Court of the State of Colorado would participate in a "sting" that would damage a member of the bar by false accusation. The Supreme Court and any other court is revered by the Petitioner. The Petitioner had his bachelors degree from the University of Colorado and after about three years of working as a landman for Gulf Oil Corporation, attended the University of Denver, College of Law. Upon graduation from the University of Denver, College of Law, Petitioner again was employed by Exxon Corporation in Houston. For the Petitioner, based on his experience, courts are sacred institutions. In fact, Petitioner counseled Ms. Rhonda Robertson by advising her to remember to come to any court appearance clean as if she was going to church. Ms. Robertson is unkempt and has difficulty cleaning her children, as she had visited the Petitioner's office with her three children with food all over their clothes. This behavior in addition to drug abuse is the basis for her exhusband's call to Aurora Police and the reason the police was being called to testify concerning taking her children away. The Petitioner believed that when the Supreme Court of Colorado sees the evidence in the case, he will be exonerated.

Petitioner filed exceptions with the Supreme Court of the State of Colorado, pursuant to Rule 241.20, Colorado Rules of Civil Procedure. From subsequent events it appears that the Supreme Court of the State of Colorado saw the abnormalcies

enumerated by the Petitioner and the evidence that exonerates the Petitioner, but determined to harm the Petitioner, decided to pursue clandestine methods of covering up the problem.

The Supreme Court of the State of Colorado, through its representatives or agents, sent another female, Tracy Carrasquillo to pose as a person with sexual harassment problem with TWA Airlines. When Petitioner advised Ms. Carrasquillo that she does not have sexual harassment case against TWA, and provided her a written opinion, Ms. Carrasquillo then returned several times to the Petitioner's office and on one occasion requested to assist the Petitioner with organizing his files. While handling Petitioner's clients' case files, after some few days over a week into her employment as an assistant to the Petitioner, Ms. Carrasquillo inquired as to the whereabouts of the Petitioner's "Supreme Court case file". The Petitioner has never discussed any issue concerning the Supreme Court with her. Petitioner who was suspicious about the constant visits to his office by Ms. Carrasquillo, has moved his "Supreme Court case files" from his office the day before Ms. Carrasquillo started working at his office. Ms. Carrasquillo inquired, "is the Supreme Court file missing, removed, destroyed or has it been thrown away?" The Petitioner responded "Yes!". The following day Ms. Carrasquillo told the Petitioner that she has concluded her work, left a pile of magazines and books that were being shelved in the reception area and stated that she is quitting the job.

Believing that the Petitioner has no evidence to show that he filed the record of the proceeding as required and ordered by the Supreme Court of the State of Colorado, the Supreme Court of the State of Colorado rendered a decision without the records.

The Supreme Court of the State of Colorado declared that the Petitioner failed to file the transcript of the March 11, 1998, proceeding. These statements appeared as shown in **APPENDIX C** and on page 35, **APPENDIX A** or page 18, of

the court's reported opinion. The Petitioner knew that he was falsely accused of unprofessional conduct but believed that he will be exonerated if the entire records before the Supreme Court of the State of Colorado are reviewed.

An order of suspension was entered against the Petitioner on January 19, 1999, suspending the Petitioner from the practice of law for one year and one day plus payment of the cost of hearing. When the Petitioner received the opinion of the court he immediately read it and discover the error. The entire opinion of the Supreme Court of the State of Colorado attached here as **APPENDIX A**.

As stated by the Supreme Court of the State of Colorado, in **APPENDIX E,** a failure to file the transcript of the proceeding means that the Supreme Court would have no choice but to strike the exceptions. Thus, the statement of the Supreme Court of the State of Colorado that it did not receive the transcript of the proceedings demonstrates that the evidence tendered by the Petitioner was not considered and that the exceptions designed to consider all the facts before discipline may be issued was not considered.

However, Petitioner has evidence that the Transcript was filed. The Petitioner then filed a Motion to the Supreme Court of the State of Colorado requesting reconsideration. The motion was denied. **APPENDIX. B** Supporting the Petitioner's motion were documents evidencing the filing of the transcripts of the proceeding:

1. Order of Court granting respondent 45 days to file transcript of proceeding **APPENDIX E**

2 Notice of filing of Record stating that the record in the case being appealed, has been filed with the Colorado Supreme Court **APPENDIX F**

3. Letter from Kirkpatrick & Stenstrom discussing the filing procedure with the Grievance Committee **APPENDIX L**

4. Another letter from Kirkpatrick & Stenstrom concerning filing with the Grievance Committee **APPENDIX K**

5. Statement showing that Kirkpatrick & Stenstrom was paid $807.50 for the transcript by Patrick A. Egbune **APPENDIX J.** Further, Lori Stenstrom of Kirkpatrick and Stenstrom has filed an affidavit that the transcript was filed. **APPENDIX I**

On page 36, **APPENDIX A**, or page 19 of the opinion of the Supreme Court of the State of Colorado, the court stated that the presence as a panelist of a member of the Grievance Committee does not offend fundamental fairness. A letter in which the Grievance Committee stated that Michael H. Gendel, the panelist in question, believes that a conflicts of interest in the case existed is submitted as **APPENDIX M.**

The Supreme Court of the State of Colorado also stated that the Petitioner, falsely accused a judge of ex parte communication. In fact an order issued by the judge was an admission of ex parte communication. The judge declared that there was a hearing on June 8, 1994. It has never been disputed that the Petitioner, Patrick Egbune was not invited to the hearing, he did not have notice of the hearing before the judge who issued the order and judgment on June 8, 1994, and was not present at such hearing and was not given the opportunity to present argument on behalf of his client before the particular judge. There was also an issue of collateral estoppel, issue preclusion, involved in the case, in that another case involving the same issues involving the same attorneys were filed and resolved by dismissal with prejudice. The Petitioners inability to submit and have the states courts at the time, deal with the legal issues involved in cases in which he was representing clients, was among the reasons the Petitioner had to file an action in federal court, as his clients were not being heard in many courts at the time, especially Arapahoe District Courts,

covering City of Aurora, State of Colorado, the City whose police officers' conduct was among the reasons for the Writ of Certiorari denied in Case No 95-1850.

Without the transcript, the exceptions of the Petitioner is stricken. It can be said that where the transcript was not reviewed as in this case, and the exception is stricken as stated by the court, any decision of the Supreme Court of the State of Colorado, is a decision not supported by the records, thus a fabricated decision. It must also be noted that a few months after the filing of the exception, the Supreme Court of the State of Colorado shut down the Grievance Committee and instituted a new procedure for attorney discipline, effective January 1, 1999. This new procedure established a new disciplinary judge, in attempt to deal with the sycophants selected by the Grievance Committee of the Colorado Supreme Court.

REASONS FOR GRANTING THE PETITION

The petition for a writ of certiorari should be granted. The Supreme Court of the United States is the court of last resort in this matter. There is no other court that has jurisdiction to deal with this matter. Yet, a state court has decided an issue in violation of every decision of this court and the state court on matters of due process clauses of both the state and federal Constitution. Petitioner filed an action for injunction in the United States District Court for the District of Colorado, Case No. 99-N-200, because of probable violation of the due process clause of the 14th Amendment to the United State Constitution. Petitioner conferred with Office of the Attorney General of the State of Colorado to attempt to resolve this matter pursuant to Rule D. C. COLO. LR 7.1 local rules of procedure in the United States District Court for the District of Colorado. The office of the Attorney General of the State of Colorado stated correctly

that unfortunately, only the United States Supreme Court has the jurisdiction and authority to intervene in the final decisions of the State Supreme Court no matter how egregious it may be.

This matter protects important public policy issues. The need to preserve constitutional guarantees and assure that an attorney is not unjustifiable punished in his performance of duties and that an attorney is not unduly targeted for retaliation by the government. The need to protect and assure Constitutional guarantees to a professional persons acting within the bounds of the law . The need to ensure that a court of law would protect the legal rights of citizens without wilfully employing any stealthy methods to deny or circumvent same.

Petitioner is not heard and his right to a hearing is denied when the Supreme Court of the State of Colorado denies that it did not receive transcript of his March 11, 1998, hearing upon which the exceptions filed before the court was based. Without the transcript of hearing submitted by the Petitioner, the Supreme Court of the State of Colorado would not have a basis for decision that is consonant with the exceptions filed by the Petitioner. The transcript provides record of the proceeding upon which exception was filed, the testimony under oath of witnesses, the admission of evidence. Due process is therefore, violated when a decision is not based on the record. To suggest as the Supreme Court of the State of Colorado stated that " The respondent has not filed a transcript of the hearing, and the board's factual findings are supported by the record we do have" is a mistake and a misstatement of legal procedure in that without a transcript the Supreme Court of the State of Colorado can not even attempt to review an exception. Without the transcript no statement under oath is before the Supreme Court of the State of Colorado. Therefore, what is the source of the record that the Supreme Court claimed that it had? There is no such record without the transcript and that explains why the court declares that without the transcript any exception will be

stricken.

It is being emphasized that only the transcript of the proceeding contains the statement under oath of witnesses, matters of admission of evidence and the conduct of the hearing. The Petitioner paid $807.50 to the court reporter to have the transcript filed with the court. **APPENDIX I** and **APPENDIX J**. In fact the Supreme Court of the State of Colorado stated unequivocally, that failure to file a transcript means that the exception filed is stricken. **APPENDIX E**. In People v. Murphy, 174n Colo. 182, 483 P. 2d 224 (1971), the Supreme Court of the State of Colorado ruled that a reporter's transcript should also be provided when exceptions are filed.

Rule 241.20, Colorado Rules of Civil Procedure, Disciplinary proceedings before the Supreme Court, provides that when a hearing panel recommends discipline, the recommendation is filed with the clerk of the Supreme Court who dockets the recommendation with the complaint and answer. **APPENDIX N.** Thereafter, the clerk of the court shall issue a citation requesting exceptions to the hearing panels report, from the parties. It is mandatory for the party filing exception to file transcript of the proceedings before the hearing panel. The recommendation of the grievance committee's hearing panel is advisory only and it is incumbent upon the Supreme Court of the State of Colorado to exercise its independent judgment. People v. Mattox, 639 P. 2d 397 (Colo. 1982).

Clear injustice exists when there is evidence to support the fact that the required transcript was filed, in the face of the declaration of the Supreme Court of Colorado that it was not. This injustice rises to a level where the Supreme Court of the United States can articulate and re-establish the legal principles necessary to protect Petitioner's right to Due Process and Equal Protection under our laws. To deny the Petitioner his right to pursue his profession without facts that will support such denial

is unjust. It is unjust to deny the Petitioner his rights in a manner that offends decency. Why should the Supreme Court of the State of Colorado deny receiving a document clearly submitted for its review and needed as condition precedent for the review of a case affecting Petitioner?

Code of profession Ethics in Colorado requires an attorney to zealously represent his clients within the bounds of the law. Petitioner has always done that. Petition has never filed nor has he been found to file frivolous actions. Petitioner has represented all clients effectively within the bounds of the law. Majority of the Petitioner's clients are female and the Petitioner has never had problem with them nor ever exhibited any unprofessional conduct towards them. The Petitioner seeks a fair review of the records.

The Supreme Court of the State of Colorado stated in its opinion that the third-degree sexual assault is the most serious misconduct in these cases. This is why the Petitioner believes that he should be given the opportunity to rebut the claim. Is it Constitutional in our legal system to punish an individual without fair review of the facts? Is it fair to make a legal decision without review of the supporting record? It is just in our legal system to set up an individual in what appeared to be a "sting" operation, then upon failing to achieve the desired result proceed to falsely accuse the individual of misconduct? This is what the Petitioner is facing and this is what this court is being asked to intervene and redress by requesting that the Supreme Court of the State of Colorado secure the transcript and base its decision on the evidence on the record.

The Petitioner submits that the issue of fairness of the fact finder is also inherent in due process of law. An independent and unbiased fact finder is essential to due process. In Tumey v. Ohio, 273 U. S. 510 (1926), this honorable court stated that when a state deprives a person of liberty or property through a hearing held under statutes and circumstances which necessarily

interfere with the course of justice, it deprives him of liberty and property without due process of law. The court went on to say that financial interest of a court in its decision constitutes that court an unfair and partial tribunal within the prohibition of the Fourteenth Amendment. On page 19 of the opinion of the Supreme Court of the State of Colorado, or page 36 of **APPENDIX A**, the Court claimed that the presence as a panelist of a member of the Grievance Committee does not offend fundamental fairness. However, the Petitioner has in his possession the letter in which the Grievance Committee stated that Michael H. Gendel, the panelist in question, believes that a conflicts of interest in the case involving Petitioner existed. **APPENDIX M**. The Grievance Committee is supposed to investigate any complaint of unprofessional conduct. This is why the Petitioner subpoenaed the investigative counsel employed by the Grievance Committee to testify to the investigation which cleared the Petitioner. Under C. R. C. P. 241.2(c), Colorado Rules of Civil Procedure, no member of the hearing board or hearing panel can act as both the inquiry panel and the hearing panel on the same matter. Michael Gendel was an employee of the Grievance Committee and was always acting in both inquiry and hearing capacity. He informed the Grievance committee of the conflict of interest after the hearing granted to the Petitioner.

This honorable court has held that a lawyer charged with misconduct is entitled to procedural due process. In re Ruffalo, 390 U. S. 544, 88 S. Ct. 1222, 20 L. Ed 2d 117 (1968), reh. den. 391 U. S. 961, 88 S. Ct. 1833, 20 L. Ed. 2d 874 (1968). This principle has been adopted generally by all lower courts. The Supreme Court of the State of Colorado has held that it would never make an order which would prevent any lawyer or association of lawyers, from enjoying to the fullest the fundamental freedoms contained in the bill of rights. In re Petition of Colo. Bar Ass'n, 137 Colo. 357, 325 P. 2d 932

(1958). In Hirsch v. Green, 368 F. Supp. 1061 (D. C. Md. 1973), it is held that a former deputy state's attorney, who claimed to have been deprived of liberty, in that, his reputation had been substantially and irreparably damage as a result of his dismissal for unprofessional conduct, was entitled to hearing on claim. A hearing would also require a review based on the record.

The docketing of the disciplinary process with the Supreme Court of the State of Colorado and the filing of exception with the transcript of the proceeding is a significant process in the attorney discipline in Colorado. The Petitioner submits to this honorable court that to deny this process to the Petitioner by claiming that the transcript of the proceeding was not received, thus stricken the exceptions filed by the Petitioner violates procedural due process and equal protection under the law. The Petitioner has been denied the rights promised all persons in his situation.

Petitioner is a member of the bar of the Supreme Court of the United States. Petitioner submits that he should be given all process that is due before a decision that may adversely affect his right to practice his profession is taken away.

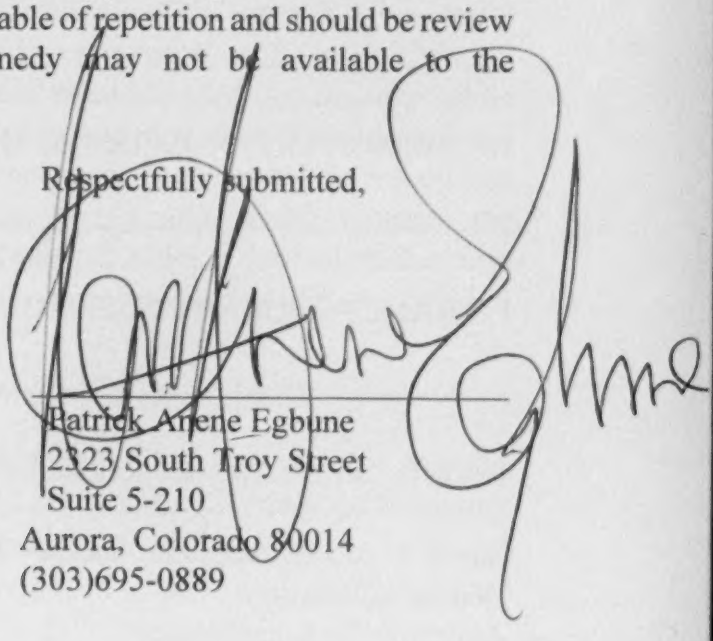
CONCLUSION

The Petitioner prays this honorable court for a writ of certiorari to the Supreme Court of the State of Colorado for the purpose of correcting the error of deciding the case brought against the Petitioner without the record to support it. It may be tedious to review records, but in a matter of significant importance, the ease with which injustice can be done should not be grounds for avoidance of justice. Substantial justice requires that the exception filed under Rule 241.20, Colorado Rules of Civil Procedure, an important aspect of the disciplinary procedure be reviewed with the records. Any

procedure of avoiding the record or the facts that exonerates an individual in a disciplinary action should not be circumvented. As indicated above, this is not the first time that facts are ignored in order to achieve disciplinary result. This honorable court should bring justice to bear by asking the Supreme court of the State of Colorado to re-order the transcript of the March 11, 1998 hearing and review the same as a basis of any decision affecting the Petitioner. This will not be an onerous burden.

Petitioner would be exonerated by the record. The Supreme Court of the State of Colorado has no substantial interest in denying the Petitioner the opportunity to clear his name. Further this matter is capable of repetition and should be review even if immediate remedy may not be available to the Petitioner.

Respectfully submitted,



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APPENDIX - A

SUPREME COURT, STATE OF COLORADO

January 19, 1999

Nos. 98SA120 & 98SA206

ORIGINAL PROCEEDING IN DISCIPLINE

IN THE MATTER OF PATRICK ANENE EGBUNE

EN BANC ATTORNEY SUSPENDED

Linda Donnelly, Attorney Regulation Counsel

James S. Sudler, Assistant Attorney Regulation Counsel
Denver, Colorado
Attorneys for Complainant

Patrick Anene Egbune, Pro Se
Aurora, Colorado

PER CURIAM

JUSTICE SCOTT does not participate.

We have consolidated two disciplinary proceedings in order to issue one opinion and order. The first discipline case, No. 98SA120, concerns false accusations made by the respondent, Patrick Anene Egbune, against an attorney and a judge. The second case, No. 98SA206 concerns Egbune's sexual assault of a client. In No. 98SA120, a hearing panel of the supreme court grievance committee accepted the findings of a hearing board, but modified the recommendation. The panel recommended that the respondent be suspended for thirty days and be required to comply with certain conditions. The same hearing panel accepted the findings and recommendation of a second hearing board in No. 98SA206, and recommended that the respondent be suspended for one year and one day. Considering the seriousness of both of these cases, we order that the respondent be suspended for a year and a day, which requires the respondent to petition for reinstatement and establish that he is once again fit to practice law.

I. No. 98SA120

Patrick Anene Egbune was admitted to practice law in Colorado in 1991. The hearing board in No. 98SA120 made the following findings by clear and convincing evidence.

A. Count I

In 1994, Kola Fadeyi entered into a commercial lease with Zephyr Smoky Hill on behalf of his business, Flavorz Ice Cream. Under the terms of the lease, certain basic construction finish work was Zephyr's responsibility. Any other improvements were the tenant's responsibility. Metro Mechanical Services billed Flavorz for finish work. Fadeyi

refused to pay, claiming that the work had been completed at Zephyr's direction, not his. There was no written agreement between Metro and Flavorz for the finish work.

In October 1994, Metro filed a verified complaint in replevin in district court against Fadeyi. Egbune filed an answer on behalf of Fadeyi, but did not assert any counterclaims or cross-claims. About a month later, Metro's lawyer filed a motion to file an amended complaint, adding Zephyr and the general contractor as defendants. Egbune filed an objection to the amended complaint, together with a motion for summary judgment, asserting that Fadeyi had not entered into a written contract with Metro. On January 5, 1995, the district court granted Metro's motion to amend the complaint. Egbune filed an answer to the amended complaint.

Metro's attorney contacted Egbune in February 1994 and offered to dismiss all claims against Fadeyi so that Fadeyi would owe Metro nothing. Egbune declined the offer because Fadeyi wanted to recover attorney fees under section 13-17-102(2), 5 C.R.S. (1998), on the ground that Metro's action lacked substantial justification. No attorney fees may be assessed, however, if a party voluntarily dismisses a claim or action within a reasonable time after the party or lawyer filing the dismissal knows, or should know, that he or she would not prevail. See § 13-17-102(5).

In March 1995, Zephyr, Metro, and the general contractor filed a stipulated dismissal since Zephyr had elected to pay Metro for the finish work. The court-approved stipulation stated that it was not to be construed to affect in any way the claims between Metro and Fadeyi.

Egbune filed a second motion for summary judgment, identical to the first except for the caption, before the court had ruled on his first motion. Both motions for summary judgment were denied. The court also agreed with the plaintiff that the second

motion was frivolous and assessed attorney fees against Egbune in the amount of $125. The case was ultimately settled in 1996, whereby all the claims were dismissed and each party would be responsible for its own fees.

Count I of the complaint charged the respondent with providing incompetent representation to his client, see Colo. RPC 1.1; filing a second frivolous motion for summary judgment, see Colo. RPC 3.1; and engaging in conduct prejudicial to the administration of justice, see Colo. RPC 8.4(d). The hearing board recommended that Count I be dismissed for the following reasons. First, the board disagreed with the complainant that Egbune's representation was incompetent. Second, the board declined to find by clear and convincing evidence that the filing of the second motion for summary judgment was frivolous, even though the district court so found.

The district court's ruling was not binding on the hearing board because the burden of proof in a civil action is generally by a preponderance of the evidence, see 13-25-127, 5 C.R.S. (1998), while in a lawyer discipline proceeding proof is by clear and convincing evidence, see C.R.C.P. 241.14(d). Issue preclusion therefore does not apply. See Restatement (Second) of Judgments § 28(4) (1982); see also Grogan v. Garner, 498 U.S. 279, 284-85 (1991) (stating that if the clear-and-convincing standard applies to the nondischargeability of a debt because of fraud in a second proceeding, a prior judgment utilizing a preponderance standard could not be given collateral estoppel effect).

Finally, the board concluded that the filing of the second motion for summary judgment did not rise to the level of conduct prejudicial to the administration of justice. The complainant did not except to the board's findings, so Count I is dismissed.

B. Count II

Zephyr filed an action against Flavorz and Fadeyi, individually, in May 1995 in county court to recoup the amount paid to Metro in the district court case. Zephyr also sought costs, expenses, and attorney fees. Egbune filed an answer, counterclaim, and a motion for declaratory judgment. In addition, he filed a motion to consolidate the county court claim filed by Zephyr with the claim filed by Metro in the district court, a motion to dismiss the county court claim, and a motion for sanctions.

In her objection to the motion to consolidate, Zephyr's lawyer stated incorrectly that trial was already scheduled in the county court case. Egbune advised the lawyer of her error and indicated that if she failed to correct it, grounds existed for him to file a grievance against her. The lawyer advised the county court of her mistake.

On June 8, 1995, the magistrate denied the motion to consolidate because C.R.C.P. 313 sets out the proper procedure to transfer a case to the district court. He also ruled that Egbune could either transfer the case under Rule 313 and pay Zephyr's attorney fees, or he could remain in the county court and attorney fees would not be imposed. After Egbune filed the appropriate motions to transfer the case, the magistrate asked Zephyr's lawyer to submit an affidavit reflecting the attorney fees she requested. At the same time he filed the motion to transfer, Egbune filed counterclaims alleging damages for intentional and negligent infliction of emotional distress, and bad faith.

Zephyr's lawyer filed an affidavit requesting attorney fees of $1,557.50. Egbune asked the court to reconsider the award of attorney fees and the other lawyer responded with a request for an additional $122.50. Egbune filed a reply to this response. On October 6, 1995, the district court judge awarded Zephyr's lawyer $1,000 in attorney fees against Flavorz and Fadeyi.

On October 17, 1995, the respondent wrote the following to the

other lawyer: "I will also be initiating disciplinary investigation against any party including anyone in the judiciary that may have assisted you or the Plaintiff in covering up or ignoring the fact that there is enough evidence to suspect that you failed to exercise candor in your dealings in this case."

Fadeyi was served with a notice of garnishment. Egbune did not receive notice of the garnishment until after Fadeyi had been served. The respondent did not offer to refund the amount garnished from Fadeyi's bank account.

Egbune filed a notice of appeal in the court of appeals with respect to the attorney fees. In his notice of appeal, the respondent stated:

5. In submitting her affidavit, [Zephyr's lawyer] lied under oath. . . .

6. [The county court magistrate] abstained from ruling on the issue of attorney's fees that he had ordered after [Zephyr's lawyer] lied under oath. . . .

7. In continuing her misstatement of facts, [Zephyr's lawyer] submitted an affidavit of attorney's fees of $1,557.50, in the County Court, then in the District Court, by an [sic] through the Order and Judgment she prepared for [the district judge], through what appears to be an ex parte communication, claimed $1,680.00 as attorneys' fees and the District Court awarded $1,000.00.

One of the issues raised in the notice of appeal was "[w]hether attorney's fees should be awarded, given the ex parte communication between [the district judge and Zephyr's lawyer] concerning payment of attorney's fees." Egbune repeated the allegation of an ex parte communication in his appellate brief.

The hearing board found that no ex parte communications between the judge and Zephyr's lawyer took place. Egbune's allegation was based solely on his assumption that because the amount claimed by Zephyr's lawyer had increased, an ex parte

communication must have occurred.

The respondent's two successive motions for summary judgment were denied by the district judge. Early on in the case, Zephyr's lawyer offered a settlement whereby Fadeyi would not have to pay anything. The offer was rejected. In December 1996, the parties met with a mediator pursuant to a court order. At the mediation, Egbune offered to settle the case for $250,000 plus $6,000 attorney fees and the $1,000 that had been garnished. He demanded interest at the rate of 45%.

The case went to trial on December 16, 1996. Fadeyi's counterclaims were dismissed with prejudice because of Egbune's failure to establish a prima facie case. Judgment was entered in favor of Zephyr against Flavorz and Fadeyi in the amount of $6,307.09, plus attorney fees of over $30,000, costs and interest. The total award against the respondent's client was $42,259.91, which judgment has not been satisfied.

The board found that the respondent failed to competently represent his client in this case, contrary to Colo. RPC 1.1, by failing to follow the proper procedure to transfer the case to district court, failing to adequately investigate the counterclaims he asserted, and filing repetitive motions. The board also concluded that Egbune had engaged in conduct prejudicial to the administration of justice in violation of Colo. RPC 8.4(d). However, the hearing board determined that Egbune did not file frivolous motions, Colo. RPC 3.1; fail to communicate with his client, Colo. RPC 1.4(a); or file written motions in the county court without first obtaining that court's approval as required by C.R.C.P. 307(b), Colo. RPC 3.4(c).

The formal complaint also alleged in Count II that Egbune had violated Colo. RPC 4.5 by threatening to file a grievance against Zephyr's lawyer in his October 17 letter. The board found that there was no clear and convincing evidence presented to them that the respondent's purpose in threatening to file the grievance was to gain an advantage in the case. As

the board noted, Colo. RPC 4.5(b) now provides that "[i]t shall not be a violation of Rule 4.5 for a lawyer to notify another person in a civil matter that the lawyer reasonably believes that the other's conduct may violate criminal, administrative or disciplinary rules or statutes."

The hearing board therefore recommended that the charges that Egbune had violated Colo. RPC 1.4(a), 3.1, 3.4(c), and 4.5 be dismissed; and the complainant has not objected. The hearing board did find that the respondent violated Colo. RPC 3.3 when he alleged that ex parte contacts had occurred between the district judge and the lawyer for the other side. Rule 3.3(a)(1) provides that "[a] lawyer shall not knowingly: . . . (1) make a false statement of material fact or law to a tribunal." Egbune's charges were pure speculation and not based on any evidence. The board concluded that Egbune made these allegations recklessly, and that a mental state of recklessness would suffice for a violation of Rule 3.3. We agree. "With one important exception [involving knowing misappropriation of property], we have considered a reckless state of mind, constituting scienter, as equivalent to `knowing' for disciplinary purposes." People v. Small, 962 P.2d 258, 260 (Colo. 1998) (holding that lawyer's mental state when he gave false testimony at trial went beyond negligence and was equivalent to knowing for disciplinary purposes).

C. Count III

Egbune represented Montech Systems in an action brought by Montech in Arapahoe County District Court. On November 16, 1994, the district judge ordered the parties to submit a stipulated status report. The order was sent to the respondent and required him to provide a copy to all of the parties of record within five days and to file a certificate that he had complied with the order. When the order was received at Egbune's office,

he was on vacation and he had not assigned anyone to cover his duties while he was gone. As a result, he did not actually see the order until he returned on November 30, 1994, and he then contacted opposing counsel.

On August 15, 1995, the district court judge referred the Montech case to alternative dispute resolution (ADR). The defendants' lawyer filed a motion for enlargement of time on August 30, asserting that Egbune had refused to participate in further discovery because of the ADR order. Two weeks later, the lawyer filed a motion asking the court to vacate its ADR order and to impose sanctions against the respondent because of his failure to provide discovery or to discuss the ADR plan. Finally, on September 22 the lawyer filed an "emergency" motion to compel discovery and impose sanctions. The district court granted the motion that same day. The defendants were told to file a record of the attorney fees and costs they incurred because of the plaintiff's and the third-party defendant's failure to provide discovery, both of whom were represented by the respondent. The court ordered Egbune to pay that amount. On October 6 Egbune filed an "emergency" motion for the court to reconsider its award of attorney fees. Among other things, Egbune asserted that he was not a party to the action.

The hearing board found that the respondent's failure to comply with the defendant's discovery requests violated Colo. RPC 3.4(d). In addition, his failure to have anyone to cover for him while he was on vacation and the court's order was received, constituted conduct prejudicial to the administration of justice, violating Colo. RPC 8.4(d).

However, the hearing board declined to find that Egbune knowingly disobeyed an obligation under the rules of tribunal. See Colo. RPC 3.4(c). Nor had it been proven by clear and convincing evidence that the respondent's argument, that he could not be personally sanctioned because he was not a party, was frivolous. See Colo. RPC 3.1. Moreover, the board

concluded that Egbune had not failed to provide competent representation to his client, see Colo. RPC 1.1, and that he had made a false statement of material fact in violation of Rule 3.3. The complainant has not excepted to the board's recommendation that these last four charges be dismissed.

No. 98SA206

The second hearing board found that the incidents described below were proven by clear and convincing evidence.

A. The Guardian Ad Litem

On April 30, 1997, a woman retained Egbune to represent her in a child custody matter. Two weeks earlier, the client's former husband had filed a motion in district court seeking sole custody of their daughter. He alleged that the child had been abused by the client's boyfriend and was living in an unsafe environment. A status conference had been set for April 29, but the respondent's prospective client mistakenly believed that her appearance was not required. She failed to appear at the status conference because of a conflict with her work schedule. The following day, the court entered an order granting an emergency change of custody to the father and appointing a guardian ad litem for the child. The parties were ordered to pay the GAL a retainer within ten days of the order. Egbune's client was ordered to pay $175 and her ex-husband was ordered to pay $350.

Egbune was hired on April 30, the day the orders were issued, to represent the woman in the custody dispute for a flat fee of $1,000. She paid him $300 initially and another $100 a few days later. On May 1, 1997, the respondent filed a motion for a forthwith hearing, alleging that the former husband's affidavit

in support of a change in custody was false and that a change of custody was not in the best interests of the child. The motion was denied. Egbune then filed a motion to reconsider and another motion for a forthwith hearing. The motions were scheduled to be heard on May 22.

Egbune obtained a copy of the court's order appointing the GAL. At this time, his client had the funds to pay the $175 fee, but Egbune told her that guardians were frequently not paid in advance despite court orders to the contrary. The respondent specifically instructed his client not to pay the $175 that was supposed to be paid to the GAL within ten days from the April 30 order until after the May 22 hearing.

Upon learning at the hearing that neither of the parties had paid the GAL as ordered, the district judge advised the parties that if they did not pay the retainer within ten days he would hold them in contempt. The judge refused to hold the hearing because he wanted the GAL to be involved.

The respondent's client angrily confronted him immediately after the hearing about his advice to not pay the GAL's fee. She fired him the same day. Also on the same day, Egbune paid the GAL's fee from the funds that the client had paid him to represent her. After a request for investigation was filed with the Office of Disciplinary Counsel, he refunded the money his client had paid him less the GAL's fee. The hearing board concluded that by advising her not to pay the GAL the retainer that the court had ordered, the respondent failed to provide competent representation to his client in violation of Colo. RPC 1.1.

B. The Sexual Advances

At his first meeting with his client regarding the custody of her young child, Egbune talked extensively about himself, his personal life, and his perception that women are attracted to him. He also told her at one point that he thought he had seen her before - in his dreams.

On May 17, 1997, the client met the respondent in his office to prepare for the hearing. He sat next to her on a loveseat and indicated that he would like to do more for her, all the while making motions with his hands towards her midsection. He moved closer, put his arm around her, and started to rub her leg. He also tried to kiss his client. She reminded him that he was married and that he was her lawyer, but he persisted in trying to kiss her and he rubbed her back. As his client continued to object, Egbune pulled away and asked her, apparently jokingly, for the $100 she owed him. The client paid him the money and asked for a receipt. When he returned with a receipt, he put his hands on his client's buttocks and tried to force his tongue into her mouth. He forcibly drew her towards his lower body and she could feel his erect penis against her. When she moved away from him and gathered her belongings to leave, he took them away from her and forcibly pulled her against him again. Egbune put his hands inside his client's pants, on her buttocks, and moved his hands up under the back of her shirt. She again objected to Egbune's advances, gathered her belongings and left his office. He followed her out, embraced and kissed her, and told her, "You belong to me."

After this encounter, the client confided in a fellow dance troupe member and co-worker what had just happened at the respondent's office. Because she did not want to be the object of Egbune's advances again, the next time she went to his office she brought a male friend. When she went to court on May 22, she brought the co-worker she had confided in with her. In the

co-worker's presence, the respondent told his client that she looked beautiful as he stroked her arm.

At the hearing, the respondent denied his former client's version of the events. Resolving the issue of credibility against the respondent and in favor of the client, the hearing board found that the respondent's unwanted sexual advances constituted the commission of a criminal act that reflected adversely on Egbune's fitness to practice law in violation of Colo. RPC 8.4(b). Specifically, the board found that Egbune's conduct violated the third-degree sexual assault statute, section 18-3-404. That section provides in part that "[a]ny actor who knowingly subjects a victim to any sexual contact commits sexual assault in the third degree if: (a) The actor knows that the victim does not consent." § 18-3-404(1)(a), 5 C.R.S. (1998).

"Sexual contact" means the knowing touching of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or the knowing touching of the clothing covering the immediate area of the victim's or actor's intimate parts if that sexual contact is for the purposes of sexual arousal, gratification, or abuse.

§ 18-3-401(4), 5 C.R.S. (1998). "'Intimate parts' means the external genitalia or the perineum or the anus or the buttocks or the pubes or the breast of any person." § 18-3-401(2), 5 C.R.S. (1998) (emphasis added). The board properly found that Egbune's conduct violated the third-degree sexual assault statute, and thus Colo. RPC 8.4(b).

III.

In No. 98SA120, the hearing panel modified the hearing board's recommendation of a ninety-day suspension plus monitoring conditions to a thirty-day suspension with the same conditions. The complainant excepted to the panel's recommendation as too lenient and the respondent filed exceptions requesting that no further action be taken against him.

In No. 98SA206, the hearing panel accepted the hearing board's findings and recommendation that the respondent be suspended from the practice of law for one year and one day. Only the respondent excepted to the panel's action in the second case, raising certain constitutional objections and asking that the proceeding be dismissed. We address the respondent's exceptions in No. 98SA120 first.

A.

There are really two bases of Egbune's exception to the board's findings and recommendation. The first is in effect a reargument of the facts of the case. The respondent has not filed a transcript of the hearing, and the board's factual findings are supported by the record we do have. We therefore will not overturn the findings. See People v. Reynolds, 933 P.2d 1295, 1303 (Colo. 1997).

Egbune's second contention is that for the court to place any restrictions or conditions on his right to practice law would offend fairness and equal protection of the law. His brief does not state any legal reason, or any reason at all, why this is so. We therefore reject the respondent's exceptions in No. 98SA120.

B.

The global issue presented by the respondent in his opening brief in No. 98SA206 is, "Whether the principle of fundamental fairness, due process of law and equal protection under the law was violated in this case, such that no disciplinary action is warranted against the respondent, Patrick Anene Egbune."

Egbune's first contention concerns due process and his right to a fair and unbiased decision maker. He asserts that a member of the grievance committee sat on a hearing board in a previous disability proceeding involving him, and that this same member sat on the hearing board in this disciplinary proceeding. He also states that there were irregularities in a 1996 disciplinary case, where he was the respondent, resulting in his filing an action in federal court, which was dismissed. He represents that the disability proceeding was then initiated against him. Egbune charges that it was improper for the member of the grievance committee to sit on the hearing board in the disciplinary case and the disability proceeding because he was a member of the grievance committee, and, as such, was not an independent adjudicator. The basis for the allegation is that the disability proceeding and subsequent disciplinary proceedings were in retaliation for his actions during the 1996 disciplinary matter, including the fact that he filed the action in federal court regarding it.

The respondent in a lawyer disciplinary proceeding is entitled to procedural due process, including the right to be heard by a neutral and detached decisionmaker. See People v. Varallo, 913 P.2d 1, 3-5 (Colo. 1997). In this case, however, the respondent has produced no evidence to support his allegation that a member of the grievance committee could not, or did not, serve as a impartial member of his hearing board in No. 98SA206. In fact, the rules in effect at the time of the respondent's hearing required that a member of the grievance committee, or a former member, serve on the hearing board. See C.R.C.P. 241.14(b). The only restriction is that a member of the inquiry panel that

investigated or reviewed the respondent's case prior to the initiation of formal proceedings may not sit on either the hearing board, or the hearing panel that reviews the board's findings. See C.R.C.P. 241.2(c). The grievance committee member who served on Egbune's hearing board in No. 98SA206 was not a member of the inquiry panel in his case. The respondent's reply brief suggests that he has confused the entire grievance committee, which at the time of the proceedings here was comprised of three separate panels, with the specific inquiry panel that investigated his case. See C.R.C.P. 241.2(c).

Each panel may act as both an inquiry panel and a hearing panel, as described in these Rules. However, no panel shall act as both the inquiry panel and the hearing panel on the same matter. All matters referred to one panel for inquiry, if subsequently referred for hearing, must be heard by the other panel or a board thereof.

Members of one panel may be reassigned by the Chairman to the other panel. However, with the exception of the Chairman, no member of the Committee who participated on the inquiry panel may participate as a member of the hearing panel on the same matter. Id. The record indicates that the member who served on the respondent's hearing board did not serve on the inquiry panel that investigated him. Nor was it improper for the member to sit on the hearing panel that reviewed the findings of the hearing board. See People v. Fitzgibbons, 909 P.2d 1098, 1101 (Colo. 1996). As in Fitzgibbons, the respondent has not demonstrated that any member of the hearing board in his case was personally biased against him. See id. at 1101-02.

Egbune's remaining challenges can be summarized as follows. Before it can be found that he had committed a criminal act by violating the third-degree sexual assault statute, the respondent asserts he has the right to be tried by a jury and the proof must be beyond a reasonable doubt. This is incorrect. "A lawyer

discipline proceeding is not a criminal proceeding . . . ." People v. Marmon, 903 P.2d 651, 652 (Colo. 1995). There is therefore no Sixth Amendment right to be tried by a jury. See People v. Smith, 937 P.2d 724, 727 (Colo. 1997). The standard of proof in such a proceeding is by clear and convincing evidence, not beyond a reasonable doubt. See People v. Distel, 759 P.2d 654, 661 (Colo. 1988). Moreover, grounds of lawyer discipline include:

Any act or omission which violates the criminal laws of this state or of the United States; provided that conviction thereof in a criminal proceeding shall not be a prerequisite to the institution of disciplinary proceedings, and provided further that acquittal in a criminal proceeding shall not necessarily bar disciplinary action . . .

C.R.C.P. 241.6(5) (emphasis added); see also People v. Morley, 725 P.2d 510, 514 (Colo. 1986) (conviction of criminal offense is not a condition precedent to attorney disciplinary proceedings involving the offense, nor is acquittal a bar).

Egbune also contends that there was a conspiracy against him, consisting of the grievance committee, the assistant disciplinary counsel and other members of the Office of Disciplinary Counsel, certain private lawyers, the police, an investigative reporter for a television station, as well as the victim in the case, his former client. Egbune raised this at the hearing. He also asserts that the hearing board should not have believed his client's testimony because she was not credible. According to Egbune, the board should have believed his version of the events in which it was the client who was the sexual predator, not him.

The hearing board resolved the credibility issue against Egbune and in favor of his client and the other witnesses against him. The hearing board also rejected his conspiracy allegations, both explicitly and implicitly. The board's findings are supported by the record and we accept them. See Reynolds, 933 P.2d at 1303.

The respondent's exceptions in No. 98SA206 are overruled.

C.

The third-degree sexual assault is the most serious misconduct in these cases. Under the ABA Standards for Imposing Lawyer Sanctions (1991 & Supp. 1992) (ABA Standards), in the absence of aggravating or mitigating factors, suspension is an appropriate sanction when "a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice." ABA Standards 5.12.

In addition, Egbune's charges that an opposing lawyer and a judge engaged in an improper communication were done recklessly, not merely negligently, which for our purposes is equivalent to knowingly. See People v. Small, 962 P.2d 258, 259-60 (Colo. 1998). A short period of suspension is appropriate for such conduct.

Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

ABA Standards at 6.12; see also People v. North, 964 P.2d 510, 511-12 (Colo. 1998).

Each hearing board found somewhat differing aggravating and mitigating factors. The hearing board in 98SA120 found the following factors in aggravation: the presence of a pattern of misconduct, see id. at 9.22(c); multiple offenses, see id. at

9.22(d); and indifference to making restitution, see id. at 9.22(j). In mitigation, the board found that the respondent has not been previously disciplined, see id. at 9.32(a); was suffering from personal and emotional problems, see id. at 9.32(c); and displayed a cooperative attitude toward the proceedings, see id. at 9.32(e). The board also found the presence of a physical or mental disability or impairment, in the nature of a diagnosed bipolar disorder, as a mitigating factor, citing ABA Standards 9.32(h). This standard was amended in 1992, however, to delete the reference to "mental disability." ABA Standards 9.32(i) (Supp. 1992) refers to mental disability, but its use as a mitigating factor has been confined to those situations where it is shown by medical evidence that the lawyer is affected by the disability; that the mental disability caused the misconduct; that the lawyer's recovery from the mental disorder is demonstrated by a meaningful period of successful rehabilitation; and that the recovery arrested the misconduct and its recurrence is unlikely. See id. at 9.32(i)(1)-(4). The hearing board did not consider any of these qualifying factors, so we do not consider the respondent's bipolar disorder to be a mitigating factor.

In 98SA206, the board found that the respondent exhibited a selfish motive in the sexual assault of his client, see id. at 9.22(b); the respondent submitted false statements during the disciplinary proceeding, see id. at 9.22(f); and the child custody client was a vulnerable victim, see id. at 9.22(h). The mitigating factors included the absence of a prior disciplinary record, see id. at 9.32(a); and that Egbune made a timely good faith effort to make restitution when he paid the GAL and refunded the balance of his fee to his client, see id. at 9.32(d).
Of these factors, we consider the absence of prior discipline to be the most important mitigating factor, and his submission of false statements to the hearing board to be the most serious aggravator.

We suspended the lawyer in People v. Martin, 897 P.2d 802 (Colo. 1995) for a year and a day following his conviction for the third-degree sexual assault of a client. See id. at 804. The fact that Egbune has not been charged or convicted of the offense is not important for discipline purposes. See People v. Musick, 960 P.2d 89, 92 (Colo. 1998).

Similarly, the respondent in People v. Brailsford, 933 P.2d 592 (Colo. 1997) was suspended for a year and a day. Brailsford pleaded guilty to the third-degree sexual assault of his wife pursuant to a plea agreement, but his conduct involved forcible penetration and was more serious than the sexual misconduct in this case. See id. at 595. On the other hand, Egbune committed other professional misconduct as well as the assault on his client.

Finally, we suspended the lawyer in People v. Lowery, 894 P.2d 758 (Colo. 1995), for a year and a day. Lowery engaged in a pattern of sexual harassment and misconduct with three female employees of his law firm. See id. at 759-60. The most serious sexual misconduct in Lowery was similar to that here, although it was not charged as a criminal offense. See id. at 759 n.1.

When we consider the seriousness of the misconduct in both these proceedings, and the aggravating and mitigating factors, we conclude that a suspension for a year and a day, which carries with it the requirement that Egbune petition for reinstatement, is appropriate. Since he will be suspended for this period, and not a shorter one, we elect not to make the monitoring conditions included in the recommendation in No. 98SA120 mandatory at this time. When the respondent petitions for reinstatement, however, if the hearing board finds it appropriate, it may condition the respondent's reinstatement on his compliance with the monitoring of his practice.

IV.

It is hereby ordered that Patrick Anene Egbune be suspended from the practice of law for one year and one day, effective thirty days after the issuance of this opinion. Egbune is further ordered to pay the combined costs of these proceedings in the amount of $2,899.01 within ninety days after this opinion is announced to the Attorney Regulation Committee, 600 Seventeenth Street, Suite 200 South, Denver, Colorado 80202-5432. Egbune shall not be reinstated until after he has complied with C.R.C.P. 251.29.

JUSTICE SCOTT does not participate.

APPENDIX - B

SUPREME COURT, STATE OF COLORADO
CASE NO. 98-SA-206
ORIGINAL PROCEEDING TN DISCIPLINE, GC 97A—66

ORDER OF COURT

IN THE MATTER OF PATRICK ANENE EGBUNE

Upon consideration of the Motion to Reconsider and to Stay Suspension Pending Decision filed in the above captioned matter, and now being sufficiently advised in the premises,

IT IS ORDERED that said Motion shall be, and the same hereby is, DENIED.

BY THE COURT, FEBRUARY 3, 1999.

/ / Seal of the Supreme Court of the State of Colorado

cc:

James S. Sudler
Assistant Disciplinary Counsel
600 Seventeenth St., 200-S
Denver, CO 80202

James P. Hollaway
Grievance Committee Counsel
600 Seventeenth St., 510-S
Denver, CO 80202-5435

Patrick Anene Egbune
Illif Office Park
2323 South Troy Street, Ste 5-210
Aurora, CO 80014

APPENDIX - C

There are really two bases of Egbune's exception to the board's findings and recommendation. The first is in effect a reargument of the facts of the case. The respondent has not filed a transcript of the hearing, and the board's factual findings are supported by the record we do have. We therefore will not overturn the findings. See People v. Reynolds, 933 P.2d 1295, 1303 (Colo. 1997).

APPENDIX - D

SUPREME COURT, STATE OF COLORADO
CASE NO. 96A 149 (96SA270)
ORIGINAL PROCEEDING IN DISABILITY
BEFORE THE GRIEVANCE COMMITTEE

DISSENT

THE PEOPLE OF THE STATE OF COLORADO,
Petitioner,

V.

PATRICK ANENE EGBUNE.
Respondent.

I strongly dissent.

While not expressly stated, I believe it is implicit in the question(s) the Supreme Court has directed to the Hearing Board that the pivotal issue is whether Mr. Egbune's medication regimen should be monitored by the office of Disciplinary' Counsel. To me, the answer to that question should be an emphatic "no'.

There is no doubt that, from a medical standpoint, it is appropriate and important that there be medical monitoring of Mr. Egbune to assure that the medications he takes to control his bipolar condition are at therapeutic levels. He agrees with that and, for the last several years. has been under the care of a physician who provides such monitoring.

However, in this case, it is a huge, inappropriate and unwarranted leap to move from the recognized medical need and desirability of such monitoring to a conclusion that monitoring should involve the office of Disciplinary Counsel or the Supreme Court. There has been no determination of professional misconduct by Mr. Egbune warranting intrusion of the Disciplinary Counsel into Mr. Egbune's medical affairs and treatment. Nor has there been any determination that Mr. Egbune is or would be unfit to practice law absent such intrusion of the Disciplinary Counsel

Indeed, there has been neither allegation nor hearing on those issues. The genesis of this proceeding is that the office of Disciplinary Counsel was very troubled by correspondence from Mr. Egbune in the course of his responding to what he believed to be an unjustified Letter of Admonition issued him by the Grievance Committee. Following inquiry, the Disciplinary Counsel determined that the complaint giving rise to the Letter of Admonition should not be pursued. Thereafter, though, Disciplinary Counsel filed the "Petition to Order a Mental Examination and Transfer Respondent to Disability Inactive Status if Warranted" because the office of Disciplinary Counsel saw Mr. Egbune s correspondence over a relatively short period of time as reflecting extreme and escalating anger which was potentially the result of Mr. Egbune's diagnosed bipolar disorder. That Petition led to Mr. Egbune being examined and interviewed by Dr. Fred Miller and to the question(s) addressed to this Hearing Board by the Supreme Court. As I understand Dr. Miller's testimony before the Board, he believed that the referenced correspondence of Mr. Egbune "possibly" reflected a flaring of Mr. Egbune's disorder, but that Mr. Egbune did not exhibit symptoms of this disorder at the time of Dr. Miller's interview of him last September.

Accordingly, Mr. Egbune now faces the prospect of intrusion into his private medical affairs and treatment because

his response to what he viewed as a totally unwarranted LOA presented the Possibility that his bipolar disorder was not being adequately controlled by medication. Such intrusion would be very wrong in my view, both as concerns Mr. Egbune directly and as precedent, for at least the following reasons:

1. As stated earlier, Mr. Egbune has not been charged with, nor had a hearing with respect to, any purported act of misconduct which would warrant imposition of sanctions upon him nor intrusion by the office of Disciplinary Counsel into his private affairs, medical or otherwise.

2. There is no proof (beyond the level of"possibility" as distinguished from probability or certainty) that, without intercession of the office of Disciplinary Counsel into the monitoring of Mr. Egbune's medication program, he would not be fit to practice law or would represent a hazard to his clients or the public. Obviously, he has not been afforded a hearing with respect to those subjects. Nor has there been any determination concerning them by any fact finder authorized to do so.

3. The Hearing Board heard testimony from Dr. Fred Miller that, in his view, Mr. Egbune's monitoring should be more frequent than has been the case and should include psychiatric consultation as a component. That difference in approach to monitoring is one which should be resolved by discussion among Dr. Miller, the treating physician, and Mr. Egbune. It is not appropriate that such difference of view be resolved by finding of this Board or by order of the Supreme Court, given the absence of allegations, proof and hearing mentioned earlier. That is a medical issue, not a professional conduct issue, as Mr. Egbune's situation is now postured.

4. There are undoubtedly numerous members of the Bar and their clients who would benefit from monitoring of various conditions arranging from significant psychiatric/psychological problems to alcoholism and even things like diabetes. However,

unless I am badly mistaken, neither the office of Disciplinary Counsel nor the Supreme Court engages in prophylactic monitoring of the medical treatment of lawyers with those conditions in the absence of allegation, proof, hearing and determination of wrongdoing or unfitness. Nor should they. Mr. Egbune's condition differs from
those only in category.

5. While I have no doubt that the office of Disciplinary Counsel is well-intentioned visa-vis Mr. Egbune, we have not yet come to the point where good intentions alone warrant or allow official intrusion into the private affairs of members of the Bar. Nor are we at a point where such good intentions alone can substitute for specific allegations, proof, and hearing.

6. The correspondence which Mr. Egbune generated in response to the Letter of Admonition reflects righteous indignation, outrage, and determination to remedy the wrong Mr. Egbune saw in that LOA. The level of same is to some (and perhaps would be to most who read it)
excessive in various ways. While such perceived excess may be rooted in part in Mr. Egbune s bipolar disorder, it may also be partially rooted in the fact that his Nigerian background may yield him a particularly virulent response to perceived oppression. It may also be rooted, in yet another part, in his status as a naturalized U.S. citizen who, as is the case with many of that status, takes his constitutional rights very seriously. It may also be partially rooted in an affinity for grandiose language. It any event, that cor-despondence clearly is an exercise of Mr. Egbune's rights of freedom of speech and petition. That exercise should not result in adverse consequences to Mr. Egbune, absent a showing of compelling need. That result certainly should not occur without scrupulous adherence to fundamental requirements of specific allegations of wrongdoing or unfitness and full and fair hearing on those

issues.

DISSENTING CONCLUSION

It is my conclusion that, while Respondent needs to be on medication to treat his bipolar disorder and it is medically desirable that such medication be monitored by a physician or physicians of his choosing, Respondent's medication does not need to be, and should not be, monitored by the office of Disciplinary Counsel or the Colorado Supreme Court.

RECOMMENDATION

It is my recommendation that:

(a) The Petition to Order a Mental Examination and Transfer Respondent to Disability Inactive Status if Warranted be dismissed; and

(b) The office of Disciplinary Counsel informally arrange for discussions among Dr. Fred Miller, Mr. Egbune and his treating physician(s) to discuss and decide if modifications should be made of methods and frequency of medical monitoring of Mr. Egbune's medication regimen.

John A Purvis

CERTIFICATE OF MAILING

I hereby certify that I have served the foregoing DISSENT by placing a true and correct copy of the same in the United States mail, first-class postage prepaid, on this 4 day of June. 1997, to:

Patrick Anene Egbune
Iliff Office Park

2323 S. Troy Street, #5-210
Aurora, CO 80014

Patrick Anene Egbune
1397 S. Geneva Way, C-201
Denver, CO 80231

James S. Sudler
Assistant Disciplinary Counsel
600 17th Street, Suite 510 S
Denver, CO 80202-5434

James Hollaway
Grievance Committee Counsel
600 17th Street, Suite 920-S
Denver, CO 80202-5434

Michael H. Gendel, M.D
3300 F. 1st Avenue
Denver, CO 80206

John A. Purvis
1050 Walnut Street, Suite 501
Boulder, CO 80302

APPENDIX - E

SUPREME COURT, STATE OF COLORADO
CASE NO. 98-SA-206
ORIGINAL PROCEEDING IN DISCIPLINE, OC 97A-86

ORDER OF COURT

THE PEOPLE OF THE STATE OF COLORADO,
Complainant,

vs.

PATRICK ANENE EGBUNE,
Respondent.

Upon consideration of the Complainant's Motion to Strike Respondent's Exceptions; the Response to Complainant's Motion to Strike and for Sanctions; the Complainant's Reply to Respondent's Motion for Sanctions; and the Reply thereto filed in the above captioned matter, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that Respondent is to provide transcript of the hearing in this matter within forty-five (45) days of the date of this order or his Exceptions will be stricken.

BY THE COURT, AUGUST **20**, 1998.

/ / Seal and stamp of the Supreme court of the State of Colorado
cc:

James S. Sudler
Assistant Disciplinary Counsel
600 Seventeenth St., 510-S
Denver, CO 80202

James P. Hollaway
Grievance Committee Counsel
600 Seventeenth St., 920-S
Denver, CO 80202-5435

Patrick Anene Egbune
2323 5. Troy Street, #5-210
Aurora, CO 80014

APPENDIX - F

SUPREME COURT, STATE OF COLORADO
CASE NO. 98SA206
ORIGINAL PROCEEDING IN DISCIPLINE, GC 97A-86

NOTICE OF FILING OF REC0RD

THE PEOPLE OF THE STATE OF COLORADO,
Complainant,

vs.

PATRICK ANENE EGBUNE,
Respondent.

NOTICE is hereby given that the record in the above captioned case has been filed in the Colorado Supreme Court. All filings and briefs in this case must bear the **exact** number and title as shown above in this order.
THE ANSWER BRIEF IS DUE ON OR BEFORE OCTOBER 13, 1998.

/ / seal and stamp of the Supreme Court of Colorado.

cc:
James S. Sudler
Assistant Disciplinary Counsel
600 Seventeenth St., 510-S
Denver, CO 80202

James P. Hollaway
Grievance Committee Counsel
600 Seventeenth St., 920-S
Denver, CO 80202-5435

Patrick Anene Egbune
2323 5. Troy Street, *5—210
Aurora, CO 80014

APPENDIX - G

SUPREME COURT, STATE OF COLORADO
CASE NO. 985A206
ORIGINAL PROCEEDING IN DISCIPLINE, GC 97A-86

ORDER OF COURT

THE PEOPLE OF THE STATE OF COLORADO,
Complainant,

vs.

PATRICK ANENE EGBUNE,
Respondent.

Upon consideration of the Motion for Extension of Time within which to Show that Admission of the Transcript of the Deposition of Rhonda Robertson was Sought, and the Complainant's Request to Withdraw Earlier Objection and for Permission to Supplement Record if Necessary filed in the above captioned matter, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that, the Complainant having withdrawn their objection, the deposition of Rhonda Robertson be made part of the Record.

IT IS FURTHER ORDERED that the Opening Brief is due on or before August 31, 1998.

BY THE COURT, July 30, 1998. / / Seal of the Supreme Court of the State of Colorado

cc:

James S. Sudler
Assistant Disciplinary Counsel
600 Seventeenth St., 510-S
Denver, CO 80202

James P. Hollaway
Grievance Committee Counsel
600 Seventeenth St., 920-S
Denver, CO 80202-5435

Patrick Anene Egbune
2323 5. Troy Street, #5-210
Aurora, CO 80014

APPENDIX - H

Neil Allen Weiner, M.D.
4770 East luff Ave.
Suite #229
Denver, CO 80222
Phone: 303-756-4608
Fax: 303-757-7994

October 27, 1997

Colorado State Supreme Court
Attn: Clerk,
4th Floor
2 East 14th Ave.
Denver, CO 80203

Dear Your Honor:

I am writing at the request of Mr. Patrick Anene Egbune, case number 965A270, **in** response to a court order seeking information about his psychiatric treatment

I was Mr. Egbune's treating psychiatrist intermittently from 1986 through 1989. Mr. Egbune re-contacted me during the first week of October. He requested that I resume his care and that I complete an evaluation for the court. I agreed and met with Mr. Egbune on October $_{6}$**th,** 1997 and again on October $_{10}$**th,** 1997 My diagnosis of Mr. Egbune is Schizoaffective Disorder, in remission. He has been effectively maintained on Escalith 450-mg bid, Trilafon 4-mg qhs and Synthroid .15 mg per day. By history, he has been maintained on these medications consistently since being discharged from the Georgia Mental Health Institute in April of 1988. I monitored his medications for a brief period of time after he returned to Denver in 1988. However, due to his stability and limited financial resources, he chose to have his medications monitored by his primary care physician, Dr. Levenson. According to Mr. Egbune, he has

continued to take his medications as prescribed and has continued to have his blood levels monitored by his primary care physician. When queried about the presence of symptoms of mania, depression, or psychosis, Mr. Egbune denies having experienced any of these symptoms since his return to Denver. On objective examination, his mood appears stable and there is no objective evidence of active signs of psychiatric illness. His thought process is normal without evidence of psychosis. When discussing his dealings with the court and the investigation of his case, there is a great deal of concern about how the court has conducted its investigation. However, this does not appear to be of delusional or psychotic proportions. His behavior and his thinking around these events appears more driven by his personality style and degree of anger and outrage over the course of events rather than by a clinically relevant disturbance in his affective state or thought process. His cognitive function appears intact. I have reviewed the results of Mr. Egbune's laboratory tests from September $_{23}$id of 1997 and January 23, 1997. His Lithium level on 1/23/97 appears on the low end of the normal range. However, Mr. Egbune states that he recalls not taking his medication the evening prior to the blood draw which may explain the low Lithium level. His laboratory results from 9/23/97 reveal a Lithium level of .9 and normal thyroid function tests. This Lithium level is well within the range where he should be maintained.

In conclusion, Mr. Egbune suffers from Schizoaffective Disorder, which has been in remission since 1988. His medication regimen is appropriate and his current dosages are adequate to maintain a therapeutic Lithium level and control of symptoms. There is nothing I have ascertained through the patient's history, history from his family members or my clinical examination which would lead me to believe that he is currently experiencing an exacerbation of his illness which would impair his ability to practice law. I have not had the opportunity to observe Mr. Egbune in his law office nor spoken with any of his clients or fellow attorneys. My assessment is based on my clinical impression of him in a medical office setting only.

I have recommended to Mr. Egbune that I meet with him for a face to face clinical examination four times per year and monitor his lithium levels, as well as other blood tests at these times. Historically, his family has always contacted me in a timely manner when Mr. Egbune has had signs or symptoms

indicating a relapse of his illness. I have discussed the importance of continuing to do this with his wife, his brother and his sister and have instructed them to call me if they have any concerns that Mr. Egbune is experiencing a recurrence of symptoms.

Please feel free to contact me if you have additional questions. I will submit records in the future if requested by the court and authorized by Mr. Egbune. I am enclosing a copy of my CV for your files.

Sincerely,
Neil Allen Weiner, M.D.
Board Certified Psychiatrist
American Academy of Psychiatry ~"" ~'~**rnlnr**~

Cc: 1. Mr. Patrick Egbune
2. James S. Sudler
600 17~ Street
Suite #510 South
Denver, CO 80202-5434
3. James Hollaway
600 17~ Street
Suite #920 South
Denver, CO 80202-5434

APPENDIX - I

AFFIDAVIT OF LORI STENTROM

STATE OF COLORADO

COUNTY OF ARAPAHOE

Affiant, being duly sworn, states as follows:

1. My name is Lori Stenstrom. I am an owner and employee of Kirkpatrick and Stenstrom, Inc., a court reporting firm.

2. A hearing was held before a panel of the Grievance Committee in case number GC 97A-86 on March 11, 1998, involving charges against Patrick A. Egbune.

3. An reporter contracting with Kirkpatrick and Stenstrom reported the hearing in GC97A-86 held March 11, 1998

4. Following the hearing, Mr. Egbune requested that a transcript be prepared.

5. Mr. Egbune was charged $807.50 for preparation of the transcript, and that sum was paid.

6. When the transcript was completed, it was delivered to the Grievance Committee offices at 600 17th St., Suite 920-South, Denver, Colorado.

7. The transcript was delivered from the Grievance Committee offices to the Colorado Supreme Court.

Further affiant sayeth naught.

Dated this 9th day of March, 1999.

/signed Lori Stenstrom/

subscribed and sworn to before me this 9th day of March, 1999 by Lori Stenstrom.

Witness my hand and official seal

/Heather A. DeSilva/ Notary Public.

My commission expires 7/08/2002 **SEAL**

APPENDIX - J

KIRKPATRICK & STENSTROM, INC.
Invoice
333W HampdenAvenue
Suite 601
Englewood, Colorado 80110
(303)788-1858, FE1N:84-13 12776

'BILL TO

Patrick Anene Egbune. Esq.
2323 South Troy Street
Aurora, CO 80014

DATE	INVOICE NO.
9/23/98	10001

RE:
People v. Egbune. Supreme Court, State of Colorado, Before the Grievance Committee Thereof Case No. GC 97A-86/98-SA-206

	$3.75	$787.50
	$20.00	$20.00
	-$807.50	-$807.50

PATRICK ANENE EGBUNE

Delivery

3/11/98

Payment Payment Received

APPENDIX - K

September 28, 1998

Patrick Egbune
2323 S. Troy Street
Number 5-210
Aurora, Colorado 80014

Re: Transcript of Proceedings

People v. Egbune, March 11, 1998

Dear *Mr.* Egbune:

Per your inquiry with my office on September 25, 199S, regarding the filing of the original transcript in this mater, the original has been filed with the Grievance Committee offices, and my understanding of their procedure is they will then file it with the Supreme Court.
I am also enclosing a new certificate page, as we realized the date had not been filled in on your certified copy.

Sincerely
Lori K. Stenstrorn, CSR
KIRKPATRICK & STENSTROM · [NC.
***certified* i shorthand reporters**
333 West *Hamden Avenue suite 601 · Englewood Colorado 80110*
· '303) 788-1858 · ***Fax*** *(303) 788-1844*

APPENDIX - L

August 24, 1998

Mr. Patrick Egbune
2323 S. Troy Street
Suite 5-210
Aurora, Colorado 80014

RE: GC97A-86

Dear Mr. Egbune:

In following up on my conversation with you. the above proceedings taken on March 11 1998, have not yet been transcribed. If you do, in fact wish to order the original and one copy the cost is $3.75 per page.

The reporter estimates approximately 210 pages far the entire proceedings. The total cost would be $787.50 plus a delivery fee and filing fee of $20.00. We will need payment in full to begin transcription. The reporter is normally allowed 60 days from the time payment is received to produce the transcript however, âs I discussed with you today, we will have the transcript to you 30 to 40 days from the date we receive payment and sooner if possible.

If we have overestimated the number of pages we will reimburse you the overpayment with the completed transcript. If we have underestimated the number of pages, we will expect payment at the time the transcript is delivered.

I also spoke with the Grievance Committee, and I will need to file the sealed original with the Grievance committee offices, and they will verify the dates. GC number, et cetera, (in a sense acting as clerk for the Supreme Court), and immediately file the original with the Supreme Court This is a procedure that we must adhere to, and therefore, we cannot give you the original transcript only a copy, as the sealed original must be filed with the Supreme Court through the Grievance Committee Offices.

Signed Lori Stenstrom

KIRKPATRICK
& STENSTROM · INC.

333 West Hamden ave. Suit, 601 · Englewood Colorado 8020 303) 7884858 · Fax 303) W8-1844

Mr. Patrick Egbune
August 24, 1998
Page 2

Our receipt of your check will begin the transcription of this hearing, and *will* also be your acknowledgment that you agree to the foregoing procedure.

If you have any questions concerning our policy, please contact me. Thank you.

Sincerely,
Lori K. STENSTROM
KIRK PAT RI C K
& STENSTROM · INC.
certified Shorthand Reporters

APPENDIX - M

GRIEVANCE COMMITTEE
SUPREME COURT · STATE OP COLORADO
60017th Street. Suite 300 S
Denver. CO 80202-5433
1(303) 893-3393

December 14, 1998

James S. Sudler
600 17th Street, Suite 200-U
Denver, CO 80202

Patrick Anene Egbune
2323 So. Tray Street, #5-210
Aurora, CO 80014

Re: *People v. Patrick Anene Egbune,* CC 98A-13.

Dear Attorneys:

Michael H. Gendel, M.D. has advised this office that he will be unable to serve as a hearing board member in the above referenced matter due to a conflict of interest. Steven K. Jacobson and Tom McNamara will serve as hearing board members and Roger Keithley, Presiding Disciplinary Judge, will preside. Also, please note the change in location for the hearing. The hearing is scheduled for March 17. 1999, beginning at 9:00 A.M., and will be heard in the Presiding Disciplinary Judge's chamber, 600 17th Street, Suite 510-S., Denver

Very truly yours.

MARY MCGUIRE
Grievance Committee Secretary /mm

cc: Steven K. Jacobson, Presiding Officer Tom McNamara
Michael H. Gendel, M.D.

APPENDIX - N

Rule 241.20. Colorado Rules of Civil Procedure

Proceeding Before the Supreme Court

(a) **Caption**. Except as otherwise provided in C.R.C.P. 241.1l(a)(2), CRCP 241.1 l (a)(3) CRCP 241.11(a)(4), and C.R.C.P. 241.15(b)(I), all disciplinary and disability proceedings filed in the Supreme Court as herein provided shall be conducted in the name of the People of the State of Colorado and shall be prosecuted by the disciplinary Counsel.

In those cases where the hearing panel recommends discipline of the respondent by the Supreme Court or the transfer of the lawyer to disability inactive status, the Committee Counsel shall promptly file with the Clerk of the Supreme Court the hearing report and recommendation, together with the complaint and answer. Thereupon, the matter shall be docketed by the Clerk as:

SUPREME COURT, STATE OF COLORADO
Case No.
ORIGINAL PROCEEDING IN DISCIPLINE

THE PEOPLE OF THE STATE OF COLORADO

Complainant,

vs.

Respondent

(**b)Exceptions to the Hearing Board's Report**. (I) Upon the docketing of the case, the clerk shall issue a citation to each of the parties allowing twenty days within which exceptions so the hearing panel's report. A copy of the citation and of the hearing report shall be promptly served upon the parties by the Clerk.

(2)Exceptions to the hearing panel's report by any party shall be filed with the Clerk served on the opposing party within twenty days after service of the citation and hearing panel's report.

(3)If no exceptions are filed, the matter will stand submitted upon the hearing panel's report

(4)If exceptions are filed, the excepting party shall within ten days after filing the exceptions request the reporter to prepare a transcript of the proceedings before the hearing board or any portion of such transcript thereof as the excepting party deems necessary for the consideration of the exceptions. The excepting party shall file with the Committee counsel and serve on opposing counsel a designation of those portions of the transcript of the record before the hearing board which the excepting party wishes added to record before the Supreme Court.

The opposing party may within ten days after service of the designation file and serve cross-designation of any additional portions of the transcript and additional parts of the record before the hearing board as the opposing party deems necessary for a proper consideration of the matter. The excepting party is responsible for the expense of preparing the record.

The reporter shall prepare the transcript and file it. properly certified, with the Committee who shall then file the transcript and other additions to the record, properly

certified with the Clerk of the Supreme Court within sixty days after the filing of the exceptions

(5) An excepting party shall have thirty days after the filing with the Clerk of she supreme Court of the transcript and other additions so the record within which to file an opening brief. The opposing party shall have thirty days after the filing of the excepting party's opening brief within which to file an answer brief. The excepting party shall have ten days after the filing of the answer brief within which to file a reply brief.

(c) **Indigency.** The Supreme Court may waive charges for preparation of the record and may designate counsel to represent an indigent respondent.